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MAY 21 1994

HUB LAW OFFICES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12
13 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
INTERNATIONAL, a California not-)
14 for-profit religious corporation;) MEMORANDUM OF POINTS AND
15 Plaintiffs,) AUTHORITIES IN SUPPORT OF
16 vs.) CROSS-DEFENDANT CHURCH OF
GERALD ARMSTRONG; MICHAEL WALTON;) SCIENTOLOGY INTERNATIONAL'S
17 et al.,) MOTION TO STRIKE PORTIONS
18 Defendants.) OF GERALD ARMSTRONG'S
19) VERIFIED CROSS-COMPLAINT
DATE: June 10, 1994
TIME: 9:00 a.m.
DEPT: 1
20 GERALD ARMSTRONG,)
21 Cross-Complainant,) DISCOVERY CUT-OFF: None
22 vs.) MOTION CUT-OFF: None
TRIAL DATE: None
23 THE CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
24 Corporation; DAVID MISCAVIGE;)
DOES 1 to 100;)
25 Cross-Defendants.)
26)
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1 I.

2 INTRODUCTION

3 For the third time, defendant Gerald Armstrong has filed a
4 cross-complaint which is replete with material that is on its
5 face time-barred, irrelevant, scandalous and inflammatory. This
6 court has already ruled that these identical allegations do not
7 constitute a claim for abuse of process. This material should be
8 stricken, and Armstrong admonished.

9 II.

10 IRRELEVANT, IMPROPER AND SCANDALOUS MATTER INSERTED

11 INTO A COMPLAINT MAY BE STRICKEN BY THE COURT

12 California Code of Civil Procedure section 436 permits the
13 Court to "strike out any irrelevant, false, or improper matter
14 inserted in any pleading," and to "strike out all or any part of
15 any pleading. . . ." C.C.P. §436. Pursuant to C.C.P. §431.10,
16 "irrelevant matter" as used in §436 is the same as an "immaterial
17 allegation" contained in a pleading, which is defined by
18 §431.10(b) as:

19 (1) An allegation that is not essential to the
20 statement of a claim or defense;

21 (2) An allegation that is neither pertinent to nor
22 supported by an otherwise sufficient claim or defense;

23 (3) A demand for judgment requesting relief not
24 supported by the allegations of the complaint or cross-
25 complaint.

26 As demonstrated below, Armstrong's Cross-Complaint contains
27 all three types of immaterial allegations, all of which should be
28 stricken.

1 The rule is well-established, in California and elsewhere,
2 that the Court may order stricken from a complaint matters which
3 are irrelevant, scandalous or improper. Fisher v. Larsen (1983)
4 138 Cal.App.3d 627, 646-647, 188 Cal.Rptr. 216, 230, cert. den.
5 464 U.S. 959, 104 S.Ct. 390; Hill v. Wrather (1958) 158
6 Cal.App.2d 818, 823, 323 P.2d 567, 569. Matters such as the
7 inflammatory terms and religious invective used herein by
8 Armstrong have been held to be properly stricken. See, e.g.,
9 Bartling v. Glendale Adventist Medical Center (1986) 184
10 Cal.App.3d 961, 970, 229 Cal.Rptr. 360, 364; Bernstein v. N.V.
11 Nederlandsche-Amerikaansche Stoomvaart-Maatschappij (S.D.N.Y.
12 1946) 7 F.R.D. 63, appeal dismissed, 161 F.2d 733, cert. denied
13 332 U.S. 771, 68 S.Ct. 84. Moreover, matters which are remote as
14 to time and parties, and which are therefore not essential or
15 relevant to any statement or claim for relief, should also be
16 stricken. C.C.P. §431.10(b)(1), (2).

17 Further, a complaint should state only ultimate facts, and
18 need not recite the evidence upon which a party intends to rely.
19 Indeed, "To uphold such a pleading is to encourage prolixity and
20 a wide departure from the definiteness, certainty and perspicuity
21 which it was one of the paramount objects sought to be enforced
22 by the code system of pleading. . . ." McCaughey v. Schuette
23 (1897) 117 C. 223, 225, 48 P. 1088.

24 Armstrong's second amended cross-complaint is riddled with
25 improper and immaterial invective. Moreover, the it contains many
26 pages of allegations that are without relevance to Armstrong's
27 abuse of process claim because they concern events which, if they
28 occurred, did not happen to Armstrong, or which reflect matters

1 barred by relevant statute of limitations. The second amended
2 cross-complaint contains paragraph after paragraph regarding
3 events which allegedly occurred in 1986 through 1992. Any such
4 claimed event which occurred prior to November 30, 1992 is barred
5 by the statute of limitations, C.C.P. §340(3), and this Court
6 has already held that they will not support a claim for abuse of
7 process in this action. [Request for Judicial Notice, Exhibit 1]
8 These irrelevant allegations are improper and also scandalous in
9 content. They must be stricken.

10 III.

11 CONCLUSION

12 Armstrong has used his second amended cross-complaint to
13 infect this Court's records with page after page of irrelevant
14 venom. Most of his allegations concern matters far outside the
15 scope of the single cross-claim, and constitute his own anti-
16 religious fervor. This court has already found that they do not
17 state a claim for abuse of process. Pursuant to C.C.P. §§436,
18 431.10, and 425.14, these allegations have no place in the
19 pleadings, and should be stricken.

20 DATED: May 20, 1994

Respectfully submitted,

21 BOWLES & MOXON

22
23 By:

Laurie J. Bartilson
Laurie J. Bartilson *by law*

24
25 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

26 Attorneys for Plaintiff and
27 Cross-Defendant
28 CHURCH OF SCIENTOLOGY
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3 I declare under the penalty of perjury under the laws of the
4 State of California that the foregoing is true and correct.
5 Executed at San Francisco, California on May 20, 1994.

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8 COLLEEN Y. PALMER

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